



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

The Honorable Edward J. Markey
Chairman
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Markey:

Thank you for your letter regarding the Commission's special access rules. Special access rules have been an active topic in several recent Commission decisions, as well as ongoing proceedings. In particular, you noted a link between the Commission's special access policies and the upcoming 700 MHz auction. I agree that the upcoming 700 MHz auction holds the potential to spur additional broadband competition and innovation and the Commission is working diligently to maximize the public interest benefits of the auction. The Commission is committed to continued implementation of policies that bring the benefits of competition -- more and better services and lower prices -- to all Americans.

Since 1996, the Commission has followed the direction found in the Telecommunications Act of 1996 to foster policies and rules that "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." In 1999, the Commission specifically recognized the significant costs associated with direct price regulation (including regulation of wholesale prices) of special access services. The Commission recognized that special access regulation "imposes costs on carriers and the public." Moreover, in granting pricing flexibility for special access services to price-cap incumbent LECs, the Commission explicitly found that the cost of further delaying regulatory relief was greater than the cost of granting relief prematurely. The Commission determined that "the public interest is better served by permitting market forces to govern the rates for the access services at this point." In its review of the Commission's decision, the United States Court of Appeals for the D.C. Circuit upheld the Commission's rules, rejecting arguments that the Commission should be required to measure actual competition before allowing incumbent carriers pricing flexibility.

In addition, the Commission has reviewed the special access issue in the context of recent proceedings. In the context of recent mergers, companies have agreed to certain special access pricing and provisioning conditions. For example, the applicants in the SBC/AT&T, Verizon/MCI, and AT&T/BellSouth mergers made commitments, enforceable by the Commission, to freeze special access prices for a certain period of time. Thus, special access price freezes are now in place for two out of the three Bell regions. In its most recent merger with BellSouth, AT&T also went further and committed to reduce certain special access prices. Moreover, in each of these mergers, as well as a Qwest forbearance petition earlier this year, the applicants made commitments, enforceable by the Commission, to implement a performance metrics plan under which they will provide performance data on a quarterly basis. Accordingly, special access performance measures are now in place in all three Bell regions.

As you note, the Government Accountability Office (GAO) issued a report in November 2006 raising concerns about competition and pricing in special access markets. The GAO report contains factual findings which appear to be based primarily on two studies. I have asked Commission staff to request access to all the data used by GAO to develop its conclusions in its report and to perform the Commission's own analysis of the reliability and validity of the GAO findings.

In addition, I provided a detailed response to Congress addressing the conclusions and recommendations contained in the GAO report. I have attached a copy of that letter for your review.

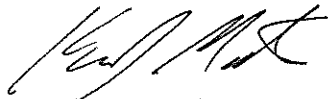
In January 2005, the Commission adopted a Notice of Proposed Rulemaking (NPRM) that, among other things, sought comment on the special access regulatory regime, including whether the Commission should maintain or modify the Commission's pricing flexibility rules for special access services. At this time, I do not see a need to revise the special access pricing rules. Significant market changes and Commission decisions have occurred since the Commission developed its record in this proceeding. I believe it is preferable, to refresh the record developed in 2005 so that the record upon which we act fully reflects these significant market changes.

Early this year, I asked my colleagues how they would prefer to proceed. Recently, a majority of the Commission stated a preference to seek further comment before acting on final rules. Accordingly, I asked the staff to circulate for Commission consideration a draft Public Notice asking interested parties to refresh the existing record. To the extent a majority wants to move forward to revise the special access pricing rules by September 15, 2007, I am recommending an expedited comment and reply comment cycle and will provide options to all of the commissioners.

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I appreciate the opportunity to provide feedback on this important issue. If I can provide additional information concerning this or any other matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Martin". The signature is fluid and cursive, with the first name "Kevin" and last name "Martin" clearly distinguishable.

Kevin J. Martin
Chairman